

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

ANTONIO BACHAALANI NACIF, WIES  
RAFI, and HANG GAO, individually and on  
behalf of all other similarly situated,

*Plaintiffs,*

v.

ATHIRA PHARMA, INC., and LEEN  
KAWAS, Ph.D.,

*Defendants.*

No. 2:21-cv-00861-TSZ

**CONTRIBUTING COUNSEL’S MOTION  
FOR AN AWARD OF ATTORNEYS’  
FEES AND REIMBURSEMENT OF  
EXPENSES**

Note on Motion Calendar: October 18, 2024

**I. INTRODUCTION**

Longman Law, P.C. (“Longman Law”) and its liaison counsel, Keller Rohrback L.L.P. (“Keller Rohrback”) (together, “Contributing Counsel”), attorneys for lead plaintiff movants Timothy and Tai Slyne (“Securities Act Lead Plaintiff Movants”), hereby move this Court for an award of attorneys’ fees of \$61,820 and expenses of \$461.15 based on the contribution they made to this case. *See Pappas v. Naked Juice Co. of Glendora, Inc.*, No. LA CV11-08276 JAK (PLAx), 2014 WL 12382279, at \*15 (C.D. Cal. Jan. 2, 2014) (“Civil Rule 23(f) contemplates fee awards to non-lead counsel. Thus, in considering an application for such a fee award from the common fund, the relevant inquiry is whether the services of [the non-lead counsel] provided a benefit to the common fund.”).

1 Contributing Counsel had hoped to submit their time and lodestar with the motion for an  
2 award of fee and expenses made by Co-lead Counsel, who had stated on the record that they  
3 “may” allocate a portion of any fees awarded by this Court to Longman Law.<sup>1</sup> Dkt. # 125-8 at  
4 ECF p. 34 n.12. However, this separate fee petition became necessary after discussions with  
5 counsel for Lead Plaintiff Rafi failed to reach a resolution and Rafi’s counsel would not agree to  
6 submit Contributing Counsel’s time and lodestar and related (minor) expenses in this litigation as  
7 part of with Co-Lead counsel’s fee and expense petition. The time and lodestar for which  
8 Contributing Counsel are seeking reimbursement, 114.60 hours or \$61,820 in lodestar, relates  
9 solely to prosecuting and briefing the motion for a separate Securities Act lead plaintiff and not  
10 in connection with the research and drafting of a separate complaint that was filed, or any other  
11 work in this case.<sup>2</sup> See Declarations of Howard T. Longman and Juli E. Farris in Support of  
12 Contributing Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of  
13 Expenses, concurrently filed herewith as Exhibits A and B.

14 **A. Contributing Counsel Made the Only Motion for a Separate Lead Plaintiff.**

15 Contributing Counsel vigorously represented the only lead plaintiff movants that made a  
16 motion under the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) for the  
17 appointment of a separate lead plaintiff for claims brought under the Securities Act of 1933 (the  
18 “Securities Act” or “’33 Act”) (the “Securities Act Lead Plaintiffs’ Motion”). Dkt. # 32-43. The  
19 Securities Act claims are the only extant claims in this litigation. See Dkt. # 60 (dismissing  
20 claims brought under the Securities Exchange Act of 1934 (the “Exchange Act”) and sustaining  
21 certain claims brought under the Securities Act.)  
22  
23

24 <sup>1</sup> See Dkt. # 128 at p. 10 (referencing Dkt. # 125-8 at ECF p. 34 n.12).

25 <sup>2</sup> Timothy and Tai Slyne filed their securities complaint in this Court on June 25, 2021, entitled  
26 *Slyne v. Athira Pharma, Inc.*, No. 2:21-cv-00864-TSZ (W.D. Wash.), the same day as the  
actions filed on behalf of lead plaintiff Nacif entitled *Nacif v. Athira Pharma, Inc.*, No. 2:21-cv-  
00861-TSZ (W.D. Wash.), and by counsel for lead plaintiff Rafi entitled *Jawandha v. Athira  
Pharma, Inc.*, No. 2:21-cv-00862-TSZ (W.D. Wash.).

1 In appointing lead plaintiffs this Court accepted the reasoning contained in the Securities  
2 Act Lead Plaintiffs' Movants' motion to appoint a separate lead plaintiff for claims brought  
3 under the Securities Act of 1933, however, it did not appoint Securities Act Lead Plaintiff  
4 Movants Timothy or Tai Slyne, who advanced this argument, instead ruling that under the  
5 PSLRA, lead plaintiff Wies Rafi, the movant with the largest loss who also had a claim under the  
6 '33 Act, should be appointed. Rafi was appointed Lead Plaintiff for the Securities Act claimants  
7 even though he did not make a motion for a separate lead plaintiff for the Securities Act claims  
8 and, in fact, had moved to be lead plaintiff for both persons who purchased Athira shares  
9 pursuant and traceable to the Registration Statement under the Securities Act *and* for persons  
10 who purchased Athira shares on the open market between September 18, 2020 and June 17, 2021  
11 and possessed claims only under the Exchange Act. Dkt. # 42-43. In his Response to the lead  
12 plaintiff motions, including the Securities Act Lead Plaintiffs' Motion, Plaintiff Rafi stated only  
13 that if the presumption of adequacy for proposed Lead Plaintiff Nacif, who he conceded had the  
14 largest losses overall, was rebutted or Nacif was otherwise disqualified, he should be appointed  
15 lead of both classes, again not offering any support for the argument in favor of a separate lead  
16 for the '33 Act claims. Dkt. # 46. In his Reply, movant Rafi did not argue for a separate lead for  
17 the Securities Act claims *per se*, he only asserted that if the Court were to rule in favor of the  
18 Securities Plaintiffs' lead motion and appoint separate leadership for the Securities Act claims he  
19 was more adequate than Securities Act Lead Plaintiff Movants because he had larger losses.  
20 Dkt. # 56.

21 **B. Separate Co-Lead Plaintiffs Were Appointed Which Saved Significant Judicial and**  
22 **Attorney Time and Resources.**

23 This Court, in its Order dated October 5, 2021, determined that a separate lead  
24 plaintiff to represent persons with claims under the '33 Act was preferable because plaintiff  
25 Nacif, who had the largest losses, did not have a claim under the Securities Act and because the  
26 level of proof between Securities Act and Exchange Act claims was very different—the  
Securities Act claim did not require a showing of scienter and the Exchange claims did—the

1 “situation in this matter warrants appointment of co-lead plaintiffs.” Dkt. # 60 at p. 8.  
2 Especially pertinent to ensuing events in this litigation, this Court, in appointing co-lead  
3 plaintiffs, stated:

4 Finally, the notion that an inadequate lead plaintiff could simply be replaced at a  
5 later time, *see Pino v. Cardone Capital, LLC*, No. 2:20-cv-8499, 2020 WL  
6 7585839, at \*5 (C.D. Cal. Dec. 18, 2020), does not offer much comfort here; **a  
7 new lead plaintiff and lead counsel would essentially start from scratch and  
8 the proceedings would be significantly delayed.**

9 *Id.* (emphasis added).

10 In fact, in this Court’s Order of July 29, 2022, ruling on Defendants’ motion to dismiss,  
11 the direct impact of the significant substantive distinctions that this Court had previously pointed  
12 out between the Exchange Act and the ’33 Act in its Order appointing lead counsel and the  
13 practical consequences of not appointing separate lead counsel were vividly demonstrated. Dkt. #  
14 89. While sustaining claims based on certain statements under Section 11 of the Securities Act  
15 based on the strict liability of an issuer, the same statement as well as other statements did not  
16 survive Defendants’ motion to dismiss because scienter was absent, i.e., the operative pleadings  
17 contained no facts suggesting “intent[] to ‘deceive, manipulate, or defraud’” investors. *Id.* at pp.  
18 43–44. Thus, this Court, in appointing co-leads plaintiffs, based both on inherent conflicts and  
19 practical implications flowing therefore, proved prescient. Had the Exchange Act claims been  
20 dismissed and had the only lead plaintiff been Nacif—who did not have standing to bring claims  
21 under the Securities Act—a new lead plaintiff and lead counsel would have had to be appointed  
22 under the PSLRA, resulting in significant delay. *See Scheller v. Nutanix, Inc.*, No. 19-cv-01651-  
23 WHO, 2021 WL 2410832, at \*3 (N.D. Cal June 10, 2021) (If there is no longer a lead plaintiff  
24 with viable claims or who withdraws, the Court may reopen the process for selecting a new lead  
25 plaintiff and consider new applications.); *In re Tezos Sec. Litig.*, No. 17-cv-06779-RS, 2019 WL  
26 2183448, at \*3 (N.D. Cal. Apr. 8, 2019) (PSLRA requirements must be followed for selecting a  
new lead plaintiff, even if the Court chooses to not reopen the application process and selects a  
new lead plaintiff only from existing applications.); *See also Advanced Magnetics, Inc. v.*

1 *Bayfront Partners, Inc.*, 106 F.3d 11, 20 (2d Cir. 1997) (If a lead plaintiff does not have standing  
 2 to pursue a claim on behalf of a class, a new plaintiff with standing must be selected in lieu of  
 3 dismissal to avoid injustice.) However, because a separate lead plaintiff and lead counsel had  
 4 been appointed, this action proceeded without delay, saving judicial resources as well as attorney  
 5 time and expense.

6 **C. The Appointment of a Separate Securities Lead Plaintiff Benefitted the Securities**  
 7 **Act Class**

8 The next series of events in this case drives home even more forcefully the clear  
 9 advantage of having a separate lead counsel and the substantial benefit conferred by Contributing  
 10 Counsel in making its motion and putting forth arguments in support of the Court appointing co-  
 11 lead plaintiffs. On April 28, 2023, Lead Plaintiffs Nacif and Rafi moved for preliminary approval  
 12 of a proposed settlement. Dkt. # 118. The Court denied co-lead plaintiffs' motion for preliminary  
 13 approval, providing that, among other reasons, the allocation formula did not reflect the  
 14 dismissal of the Exchange Act claims because "class members with Exchange Act claims could  
 15 recover, in the aggregate, more than class members with Securities Act . . . Claims." Dkt. # 123  
 16 at pp. 7–8.<sup>3</sup> Subsequently, co-lead counsel filed a renewed motion for preliminary approval on  
 17 December 15, 2023. Dkt. # 125. In contrast to the allocation formula contained in the first  
 18 motion for preliminary approval, Lead Plaintiffs in their second motion proffered an allocation  
 19 formula with an apportionment of 91.5% of the settlement proceeds for Securities Act claimants  
 20 and 8.5% for Exchange Act claimants, which clearly provides much greater relief for Securities  
 21 Act claimants whose claims prevailed in this Court, than Lead Plaintiff first motion for  
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23 <sup>3</sup> In its Order denying the first motion for preliminary approval of a proposed class settlement,  
 24 Dkt. # 123, this Court rejected the idea of a pro rata allocation of settlement proceeds to  
 25 claimants based on their calculated Recognized Loss Amounts, with a 25% increase to the  
 26 Recognized Loss Amounts of claimants under the Securities Act due to the fact that only the  
 Securities Act Claims prevailed in this Court. The Court expressed concern that despite the  
 25% boost, Securities Act claimants would still receive less of the settlement proceeds than  
 Exchange Act claimants even though the Exchange Act Claims were dismissed, because the  
 Recognized Loss Amounts of the Exchange Act claimants were higher due to the higher prices  
 per share following the public offerings.

1 preliminary approval. The approval by the Court of this allocation formula which is a more  
 2 accurate reflection of actual events of this litigation, *i.e.*, the dismissal of the Exchange Act  
 3 claims and the strength of the Securities Act claims, was in part enabled by the separation of the  
 4 Securities Act class leadership which was significant in ultimately achieving the proposed  
 5 settlement. Indeed, the Securities Act class members who make claims in the now proposed  
 6 settlement will gain far greater relief as a result of the appointment of separate leadership for a  
 7 separate subclass.

8 Because this Court had appointed a separate lead for a Securities Act subclass, based on  
 9 the arguments made by Contributing Counsel for a separate leadership for claims under the  
 10 Securities Act, the Court was keenly focused on the shortcomings of the approach taken in the  
 11 first motion for preliminary approval, which failed to recognize the inherent unfairness of an  
 12 allocation formula favoring the Exchange Act class members whose claims had been dismissed.  
 13 Therefore, Contributing Counsel's motion was, at minimum, a significant causative factor in  
 14 conferring a tremendous benefit on the Securities Act class members, and Contributing Counsel  
 15 is thus entitled to an award of a fee. *Pappas*, 2014 WL 12382279, at \*15.

## 16 II. CONCLUSION

17 Contributing Counsel therefore respectfully request an award of attorneys' fees in the  
 18 amount of their combined lodestar of \$61,820 and expenses of \$461.15, all directly related to  
 19 making the Securities Act Lead Plaintiffs' motion seeking separate leadership for claims under  
 20 the Securities Act of 1933.

21 Dated: April 30, 2024.

Respectfully submitted,

22 *s/ Juli E. Farris*

23 Juli E. Farris, WSBA 17593  
 24 Eric R. Laliberte, WSBA 44840  
 25 KELLER ROHRBACK L.L.P.  
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 Seattle, Washington 98101  
 Telephone: (206) 623-1900  
 26 jfarris@kellerrohrback.com  
 elaliberte@kellerrohrback.com

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354 Eisenhower Pkwy., Suite 1800  
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hlongman@longman.law

*Attorneys for Plaintiffs Timothy Slyne and  
Tai Slyne*

# **EXHIBIT A**



The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

ANTONIO BACHAALANI NACIF, WIES  
RAFI, and HANG GAO, individually and on  
behalf of all other similarly situated,

*Plaintiffs,*

v.

ATHIRA PHARMA, INC., and LEEN  
KAWAS, Ph.D.,

*Defendants.*

No. 2:21-cv-00861-TSZ

**DECLARATION OF HOWARD T.  
LONGMAN ON BEHALF OF  
LONGMAN LAW, P.C. IN  
SUPPORT OF CONTRIBUTING  
COUNSEL’S MOTION FOR AN  
AWARD OF ATTORNEYS’ FEES  
AND REIMBURSEMENT OF  
EXPENSES**

1. I am principal of the law firm Longman Law, P.C. (“Longman Law”), and I make this Declaration of my own personal knowledge.

2. I submit this declaration in support of Longman Law and Keller Rohrback L.L.P.’s (together, “Contributing Counsel”) Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses in connection with making a lead plaintiff motion in the above-captioned action (the “Action”).

3. My firm represented lead plaintiff movants Timothy and Tai Slyne in the Action, on whose behalf my firm filed a complaint in the Action and made and prosecuted a motion for appointment of separate lead plaintiffs solely for claims under the Securities Act of 1933 under

1 the Private Securities Litigation Reform Act of 1995 (“PSLRA”). The principal tasks undertaken  
2 by my firm for which I am seeking compensation included: researching and drafting a motion  
3 and supporting memorandum for a lead plaintiff motion under the PSLRA, researching and  
4 drafting opposition and reply memorandums, respectively, in opposition to other motions for  
5 lead plaintiff and in support of our motion.

6 4. The schedule attached hereto as Exhibit A is a summary indicating the amount of  
7 time spent by each attorney and paralegal of my firm who was involved in the prosecution of the  
8 Action, and the lodestar calculation based on my firm’s historical billing rates. The schedule was  
9 prepared from contemporaneous daily time records regularly prepared and maintained by my  
10 firm. Time expended in preparing this declaration has not been included in this request.

11 5. The hourly rates for me and support staff in my firm included in Exhibit A are the  
12 regular rates charged for their services in litigation similar to this one.

13 6. The total number of hours expended on the Action by my firm is 88.5 hours. The  
14 total lodestar for my firm for those hours is \$49,137.50. Declarant will provide the detailed time  
15 record entries upon the Court’s request.

16 7. My firm’s lodestar figures are based upon the firm’s billing rates, which rates do  
17 not include charges for expenses items. Expense items are billed separately, and such charges are  
18 not duplicated in my firm’s billing rates.

19 8. As detailed in Exhibit B, my firm has incurred a total of \$289.97 in unreimbursed  
20 expenses incurred in connection with the prosecution of the Action. The expenses incurred are  
21 reflected on the books and records of my firm. These books and records are prepared from  
22 expense vouchers, check records and other source materials and are an accurate record of the  
23 expenses incurred.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed on April 30, 2024.

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Howard T. Longman

# EXHIBIT A

NACIF et al. v. ATHIRA PHARMA, INC. et al.**Longman Law, P.C.**

	<u>Total Hours</u>	<u>Current Hourly Rates</u>	<u>Lodestar</u>
<b><u>Attorneys:</u></b>			
Howard T. Longman	32.60	\$950.00	\$30,970.00
<b>Total for Attorneys:</b>	<b><u>32.60</u></b>		<b><u>\$ 30,970.00</u></b>
<b><u>Paralegals:</u></b>			
Adam Longman	55.90	\$325.00	\$18,167.50
<b>Total for Paralegals:</b>	<b><u>55.90</u></b>		<b><u>\$ 18,167.50</u></b>
<b>Grand Totals:</b>	<b><u>88.50</u></b>		<b><u>\$ 49,137.50</u></b>

# EXHIBIT B

NACIF et al. v. ATHIRA PHARMA, INC. et al.

**Longman Law, P.C.**

<b><u>Description</u></b>	<b><u>Amount</u></b>
Commercial Copies	
Computer & Other Research Fee(s)	\$289.97
Contributions to Plaintiffs' Litigation Fund	
Courier & Overnight Delivery Services	
Court & Filing Fee(s)	
Notice Expense(s)	
Postage	
Reproduction (In-House)	
Service Fee(s)	
Telephone/Fax	
Transcript(s)	
Travel Expenses (including hotels, meals & transportation)	
Miscellaneous (please list)	
<b>TOTAL:</b>	<b><u>\$ 289.97</u></b>

# **EXHIBIT B**

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

ANTONIO BACHAALANI NACIF, WIES  
RAFI, and HANG GAO, individually and on  
behalf of all other similarly situated,

*Plaintiffs,*

v.

ATHIRA PHARMA, INC., and LEEN  
KAWAS, Ph.D.,

*Defendants.*

No. 2:21-cv-00861-TSZ

**DECLARATION OF JULI E. FARRIS  
ON BEHALF OF KELLER  
ROHRBACK L.L.P. IN SUPPORT OF  
CONTRIBUTING COUNSEL’S  
MOTION FOR AN AWARD OF  
ATTORNEYS’ FEES AND  
REIMBURSEMENT OF EXPENSES**

1. I am a partner at Keller Rohrback L.L.P. (“Keller Rohrback”) and I make this Declaration of my own personal knowledge.

2. I submit this declaration in support of Longman Law, P.C. (“Longman Law”) and Keller Rohrback’s (together, “Contributing Counsel”) Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses in connection with making a lead plaintiff motion in the above-captioned action (the “Action”).

3. My firm represented lead plaintiff movants Timothy and Tai Slyne in the Action, on whose behalf my firm filed a complaint in the Action and made and prosecuted a motion for appointment of separate lead plaintiffs solely for claims under the Securities Act of 1933 under



1 the Private Securities Litigation Reform Act of 1995 (“PSLRA”), as co-counsel to the Longman  
2 Law and local counsel admitted to the Western District of Washington. The principal tasks  
3 undertaken by my firm for which I am seeking compensation included: researching and drafting  
4 a motion and supporting memorandum for a lead plaintiff motion under the PSLRA, researching  
5 and drafting opposition and reply memorandums, respectively, in opposition to other motions for  
6 lead plaintiff and in support of our motion. Our participation in these activities was not merely  
7 administrative, as we assisted the Longman Law firm with substantive research and case strategy  
8 in developing our arguments, and in drafting and preparing briefs for submission to the Court.

9 4. The schedule attached hereto as Exhibit A is a summary indicating the amount of  
10 time spent by each attorney and paralegal of my firm who was involved in the prosecution of the  
11 Action, and the lodestar calculation based on my firm’s historical billing rates. The schedule was  
12 prepared from contemporaneous daily time records regularly prepared and maintained by my  
13 firm. The schedule does not reflect all of the time expended in this matter, but is limited to time  
14 expended for the activities described above for which we request compensation. Time expended  
15 in preparing this declaration has not been included in this request.

16 5. The hourly rates for me and support staff in my firm included in Exhibit A are the  
17 regular rates charged for their services in litigation similar to this one.

18 6. The total number of hours expended on the Action by my firm is 26.10 hours.  
19 The total lodestar for my firm for those hours is \$12,682.50. Declarant will provide the detailed  
20 time record entries upon the Court’s request.


21 7. My firm’s lodestar figures are based upon the firm’s billing rates, which rates do  
22 not include charges for expense items. Expense items are billed separately, and such charges are  
23 not duplicated in my firm’s billing rates.

24 8. As detailed in Exhibit B, my firm has incurred a total of \$171.18 in unreimbursed  
25 expenses incurred in connection with the prosecution of the Action. The expenses incurred are  
26 reflected on the books and records of my firm. These books and records are prepared from

1 expense vouchers, check records and other source materials and are an accurate record of the  
2 expenses incurred.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on April 30, 2024.

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Juli E. Farris

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# EXHIBIT A

NACIF et al. v. ATHIRA PHARMA, INC. et al.**Keller Rohrback L.L.P.**

	<u>Total Hours</u>	<u>Current Hourly Rates</u>	<u>Lodestar</u>
<b><u>Attorneys:</u></b>			
Juli E. Farris	5.60	\$965	\$5,404.00
Eric R. Laliberte	12.10	\$350	\$4,235.00
<b>Total for Attorneys:</b>	<b><u>17.70</u></b>		<b>\$ <u>9,639.00</u></b>
<b><u>Paralegals:</u></b>			
Jason Dillman	7.50	340.00	\$2,737.50
Mary Montgomery	0.90	365.00	\$306.00
<b>Total for Paralegals:</b>	<b><u>8.40</u></b>		<b>\$ <u>3,043.50</u></b>
<b>Grand Totals:</b>	<b><u>26.10</u></b>		<b>\$ <u>12,682.50</u></b>

# EXHIBIT B

NACIF et al. v. ATHIRA PHARMA, INC. et al.

**Keller Rohrback L.L.P.**

<b><u>Description</u></b>	<b><u>Amount</u></b>
Commercial Copies	
Computer & Other Research Fee(s)	\$169.18
Contributions to Plaintiffs' Litigation Fund	
Courier & Overnight Delivery Services	
Court & Filing Fee(s)	
Notice Expense(s)	
Postage	
Reproduction (In-House)	\$2.00
Service Fee(s)	
Telephone/Fax	
Transcript(s)	
Travel Expenses (including hotels, meals & transportation)	
Miscellaneous (please list)	
<b>TOTAL:</b>	<b><u>\$ 171.18</u></b>